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OFFICE OF PETITIONS

In re Application of
Tsuyoshi Maeda
Application No. 10/614,980
Filed: November 6, 2002
Attorney Docket No. 115907

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: DECISION ON PETITION
: UNDER 37 CFR 1.313(c)(2)
:

This is a decision on the petition, filed October 7, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.


The petition is **GRANTED**, *nunc pro tunc*.

The file record discloses that a Notice of Allowance and Fee(s) Due was mailed on June 10, 2005. The issue and publication fees were timely paid on September 9, 2005. Thereafter, on October 7, 2005, petitioner submitted a petition under 37 CFR 1.313(c)(2) to withdraw this application from issue, a Request for Continued Examination under 37 CFR 1.114, an amendment, and an Information Disclosure Statement.

It is noted that, although the petition to withdraw from issue had not been acted upon by the appropriate deciding official of the U.S. Patent and Trademark Office, the Technology Center processed the request for continued examination (RCE) under 37 CFR 1.114 and subsequently issued a new Notice of Allowance and Fee(s) Due and Notice of Allowability on December 16, 2005. Where an issue fee has been paid and an RCE is subsequently filed, the RCE is not a proper filing unless a petition to withdraw from issue has been granted. Therefore, the examiner was without authority to act further in the case absent a grantable petition withdrawing the application from issue. Nevertheless, in view of this decision on petition, the RCE is now considered a proper filing and the actions of the examiner taken thereafter are hereby ratified.

The file record of this case discloses that Part B - Fee(s) Transmittal form was received on March 1, 2006, in reply to the December 16, 2005 Notice of Allowance. Accordingly, this matter is being referred to Publishing Division for appropriate processing in the normal course of business.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions